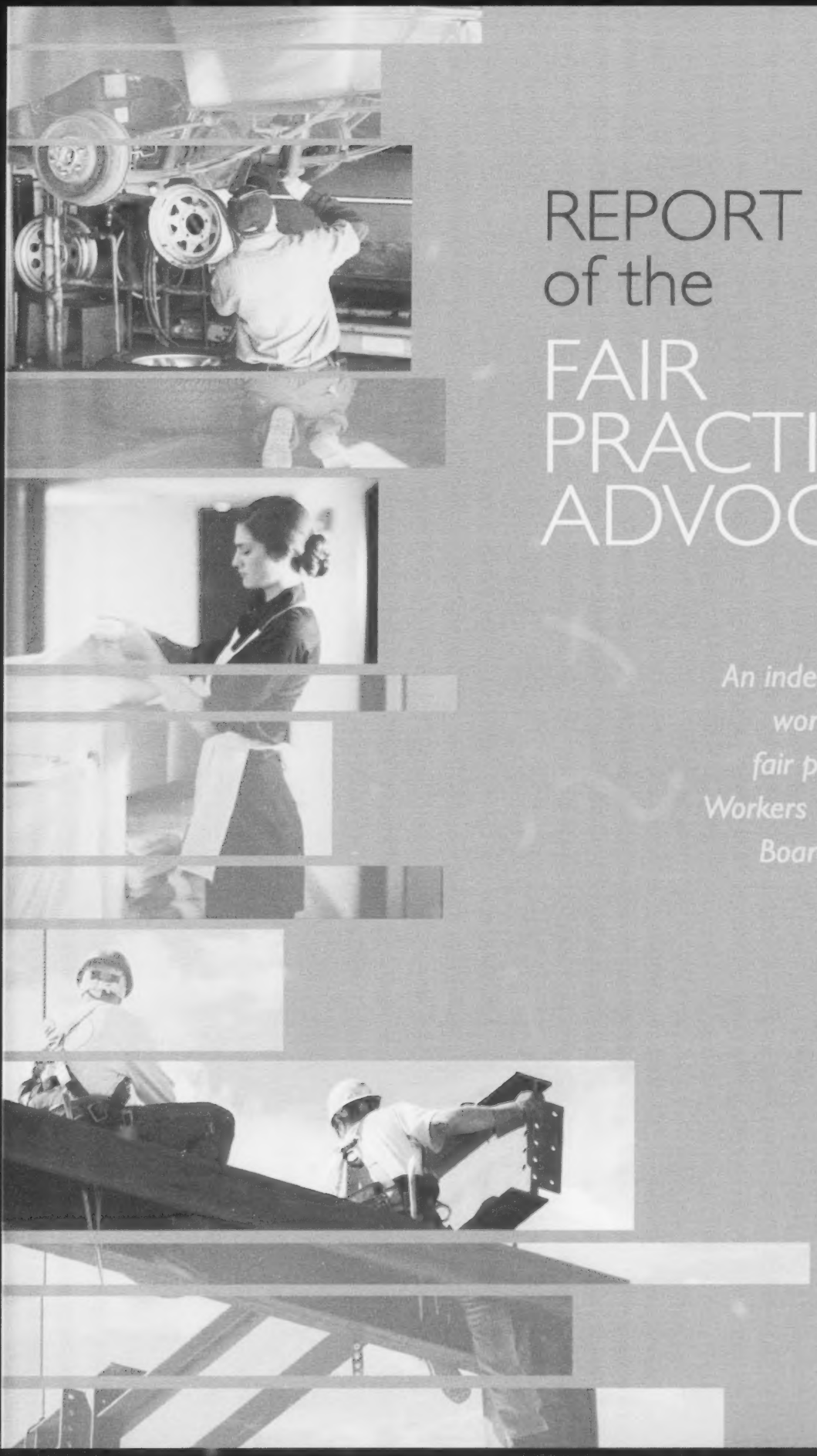

REPORT of the FAIR PRACTICES ADVOCATE

2011

An independent office working to ensure fair practices at the Workers Compensation Board of Manitoba

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Greetings from the Fair Practices Advocate

Writing this annual report provides the opportunity to review the accomplishments of the Fair Practices Office over the past year and to describe our future plans. It is also marks the end of my first year as the Fair Practices Advocate.

My predecessor, Pat Macgillivary, left a well-run office staffed by two very capable assistants, Maureen Early and Sandra Payette. Both helped me immeasurably as I learned the claims process and administrative procedures.

Aside from the Fair Practices Office, I received a warm welcome from everyone at the Workers Compensation Board of Manitoba. Everything needed to settle in and begin my work was provided, including a comprehensive orientation plan.

Urged along by calls and letters from workers and employers asking for help, I began to tackle the steep learning curve. Soon, I was immersed in complex topics that ranged from vocational rehabilitation to rate setting. I began to experience the gratification that comes from serving the public in the ombudsman tradition.

In 2012, the Fair Practices Office will continue to respond to individual complaints and questions from workers and employers. We will remain alert to signs of systemic issues that need to be addressed. In the coming year, we will increase awareness of the Office among workers and employers. We anticipate this will increase the inquiries we receive and we will continue to respond in a thorough and timely manner.

The Fair Practices Office enjoys a positive and productive working relationship with executive and staff of the Workers Compensation Board of Manitoba. We are confident that in 2012 our mutual efforts will continue to assist the Board to provide services that are fast, easy, caring, right and clear.

As long ago as 200 B.C. - when Roman censors addressed complaints from the citizenry - it has been recognized that there is need for oversight of government administrative actions. As I begin my second year as the Fair Practices Advocate, I more fully appreciate the importance of the ombudsman role, which has evolved to provide administrative oversight and promote fairness, equity, openness and accountability. It is humbling and exciting to be part of the ombudsman tradition.

The Fair Practices Office looks forward to assisting those who reach out to us in 2012.

Deana Martz
Fair Practices Advocate

Overview

The Fair Practices Office is an independent office within the workers' compensation system in Manitoba. The Office acts as an ombudsman for injured workers, their dependents, and employers with the goal of helping them resolve issues they may have with the Workers Compensation Board (WCB), and in doing so, help the WCB improve its quality of service.

Currently, the Office is staffed by the Fair Practices Advocate and one Intake and Investigative Assistant.

The Fair Practices Office has three main purposes:

- to listen to the concerns raised by injured workers, their dependents, and employers
- to pursue the resolution of issues brought forward
- to identify reoccurring issues regarding fair practice and report them to the WCB

Three main principles guide the work of the Fair Practices Office:

- **Impartiality** - The Fair Practices Office reviews all issues impartially and makes recommendations that promote fair practice.
- **Confidentiality** - All inquires received by the Fair Practices Office are confidential, unless an intervention is requested.
- **Independence** - The Fair Practices Office serves injured workers, employers, and the WCB, but works independently in the interest of fairness.

Differences in Mandates
Fair Practices Office, Review Office, Appeal Commission

The Fair Practices Office and the appeal mandates of the Review Office and Appeal Commission complement rather than duplicate one another. This is reflected in two differences in their respective mandates:

Range of Issues

Many of the issues brought to the Fair Practices Office lie outside of appeal mandates, such as the timeliness of adjudication and processing of benefits, courtesy and communication issues, and the need for apology when things have gone wrong.

Authority to Make Recommendations vs. Changing Decisions

The appeal mandates of the Review Office and the Appeal Commission give each the authority to change a decision if they believe the weight of the evidence, on a balance of probabilities, fails to support the decision. The Fair Practices Office mandate is narrower; it is restricted to making recommendations for change. Recommendations are made only if the decision or actions of the WCB are determined to be clearly wrong or clearly unreasonable. This is a more stringent test than would be applied to the same issues through the appeals process.

The Fair Practices Office Resolution Process

When we receive complaints or enquiries, typically, we use the following process to seek resolution of issues:

1. If a caller has not already done so, we encourage the caller, where appropriate, to address the issue with the WCB staff person most directly responsible for the issue.

2. If the issue is left with the Fair Practices Office, we assess it to determine if there is a fairness issue to be addressed. Depending on the issue, we may consider the following questions to make this determination:

   - Is there an issue of timeliness that can be addressed?
   - Is there a comunication issue that needs to be resolved?
   - Does the caller require more information to understand WCB processes and policies?
   - Was the claim investigated adequately?
   - Did the caller have an opportunity to make a case to the decision maker?
   - Is there a reasonable and logical connection between the facts of the case and the decision reached?
   - Was the rationale for the decision clearly explained?
   - Is the decision consistent with WCB legislation and policy?
   - If a mistake was made, was it acknowledged and, when possible, corrected?
   - Did the WCB respond fairly and respectfully if a caller felt poorly treated?

3. If the Office determines that a fairness issue is not involved, we explain this to the caller.

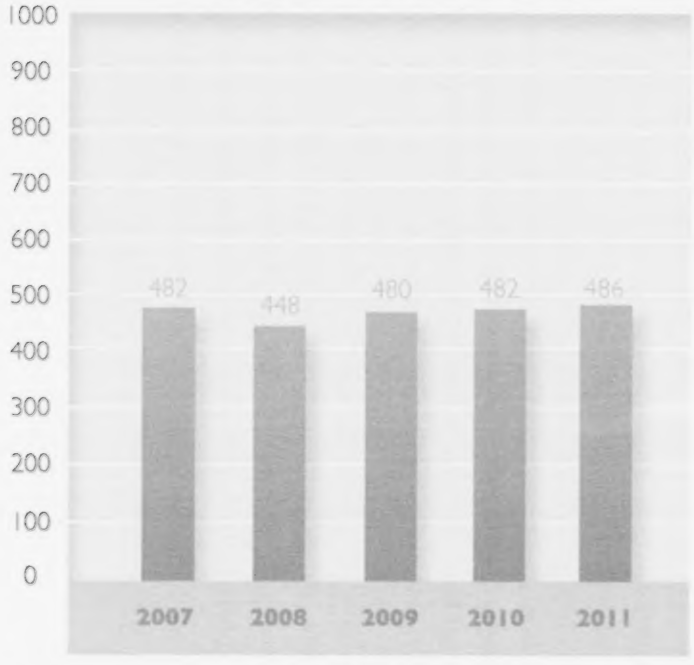
4. If there appears to be a fairness issue that requires further investigation or action, the Office contacts WCB management staff to discuss steps to resolve the issue. If the issue remains unaddressed, the Office approaches senior management to discuss options for resolution.

5. We contact the caller with the results.

Issues Heard by the Fair Practices Office

Injured workers and employers contact the Fair Practices Office with a wide variety of concerns and issues. In 2011, 486 issues were raised. Over the past five years, the number of issues raised has remainded stable.

TOTAL NUMBER OF ISSUES RAISED 2007-2011



Issues heard by the Fair Practices Office fall into five general categories:

1. Information
2. Disagreement with Decisions
3. Communication/Service
4. Process Delays
5. Unadjudicated Claims

The five categories are described on the following pages, with examples of actual issues brought forward in the past year.

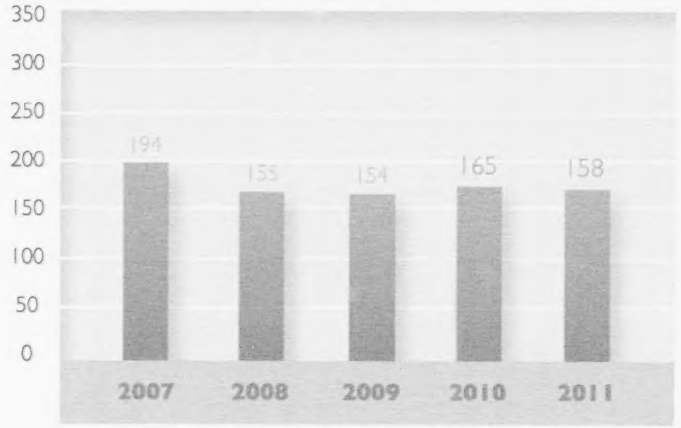
1. Information

This category of calls relates to requests for information about any of the following three areas of concern:

- **Policies, procedures, and legislation** – Callers request an explanation or confirmation of what they were told by WCB staff about the content or interpretation of WCB policies and procedures, or The Workers Compensation Act.
- **Status of claim** – Callers want to know how some aspect of their claim is proceeding.
- **Referrals** – Callers seek information or assistance that the Fair Practices Office cannot provide, but can be provided by a different office of the WCB or by an external organization.

An Example of This Issue

1. INFORMATION ISSUES 2007-2011



▶ An injured worker was upset when she received a call from WCB advising her of a mistake in her benefit rate and that she was responsible for reimbursement of an overpayment. When she called the Fair Practices Office, she said she had been told the matter was being referred to a collections agency and wondered why she could not make arrangements to repay the amount in installments. We provided the injured worker with an explanation of the repayment process and assured her that the matter had not been referred to an outside collections agency but to WCB's internal collections office. We referred her to her case manager to set up a repayment plan.

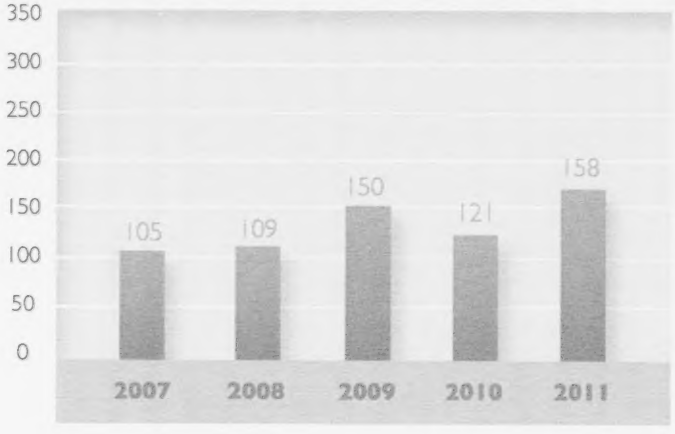
2. Disagreement with Decisions

This category deals with disagreements over WCB decisions on claims or benefits. The Fair Practices Office addresses this issue when either the decision is clearly wrong or clearly unreasonable, or when the investigation has been insufficient to support the decision.

In 2011, we took in 158 disagreements with decisions. After we reviewed the complaints, we made recommendations for further investigation or found the decisions to be clearly wrong or unreasonable in approximately one-third of the complaints; we made no recommendations on the remaining two-thirds.

Examples of This Issue

2. DISAGREEMENT WITH DECISIONS 2007-2011



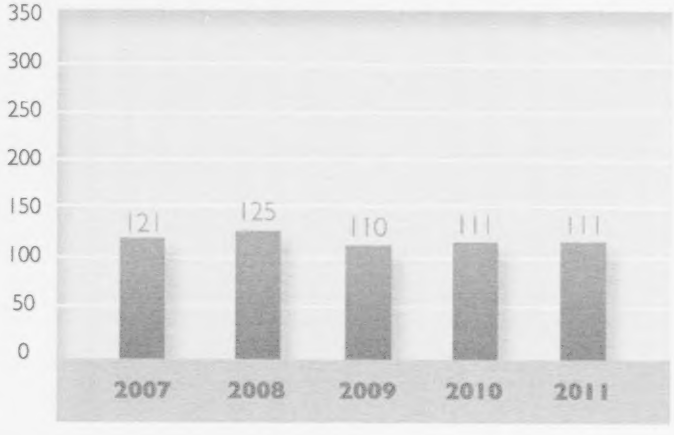
- An injured worker disagreed with the how her wage loss benefits were calculated. After reviewing her file, The Fair Practices Office determined that policy had been applied incorrectly, details regarding the injured worker's dates of employment and pay were overlooked and calculation errors were made. Once corrected, the injured worker's benefit rate increased.

- An injured worker called the Fair Practices Office because he disagreed with the decision to end his wage loss benefits after he had been observed operating certain equipment. He told the Office he was not employed, just helping a friend. We explained whether or not he was paid or employed was not the issue. By operating this equipment, he had, in fact, demonstrated that he could work. The Fair Practices Office found that the decision to end benefits was neither clearly wrong nor unreasonable.

3. Communication/Service

Communication/Service issues relate to dissatisfaction with the service received from WCB staff or the way the staff communicate. Typical examples may include unclear communications, difficulty in contacting staff and in having calls returned, lack of appropriate management of a case, or communication that the caller perceived as being disrespectful or unprofessional.

3. COMMUNICATION/SERVICE ISSUES 2007-2011



Examples of This Issue

- An injured worker called the Fair Practices Office to express her frustration over how her claim had been managed. She acknowledged that she had many personal issues while on her claim. However, she stated she had overcome them and staff did not know her as the person she is today. She believed they did not take her seriously and were biased against her.

  She disagreed with decisions on her claim and wanted to appeal them. She lives with pain and impairment and was afraid to risk the emotional and physical effort the appeal process would require as she lacked trust her issues would receive a fair hearing. She also feared retaliation if she did appeal.

  Due to the complexity of the claim and the extent of the worker's distrust, WCB's Vice-President of Rehabilitation and Compensation Services and the Fair Practices Advocate met with the injured worker in her home. The Vice-President apologized for the delay in reaching a decision regarding medical aid and that WCB had not been more responsive to her requests to review her concerns.

  As a result of the meeting, a list of specific issues was drawn along with a commitment from the Vice-President to have them reviewed. This review is underway. Even if the decisions remain unchanged, it is hoped the injured worker will understand the decisions and feel that she can appeal without fear of retaliation.

  After the meeting, the injured worker wrote to say, "Thank you so much for taking the time to meet with me today. I feel a renewed sense of hope after discussing my WCB issues with you".

- An injured worker called to complain about comments his case manager made during a return to work meeting with his employer. The injured worker thought the comments dismissed the difficulties he believed he faced in attempting to return to work. As a result, the injured worker reported that his relationship with his employer was strained. After Fair Practices Office involvement, the case manager called the injured worker to apologize. As well, the return to work arrangements were revisited in an attempt to resolve the injured worker's concerns.

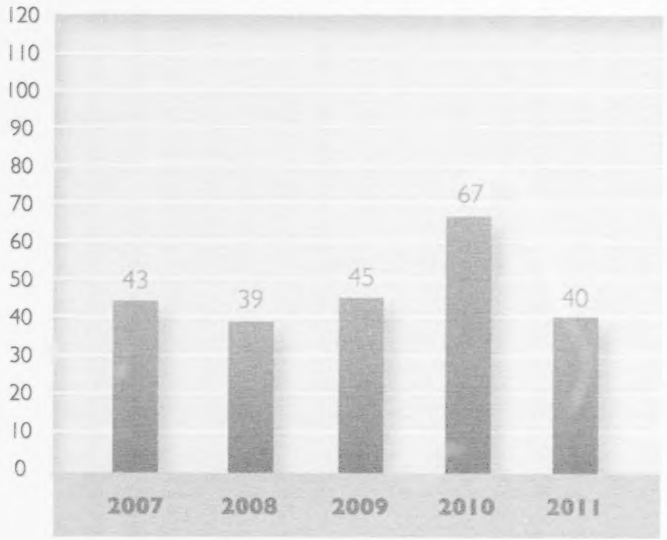
4. Process Delays

This category of issues involves injured workers or employers who feel that the WCB has taken longer than acceptable to deal with an issue.

The range of issues addressed by the Fair Practices Office under this category includes delays in issuing benefits after acceptance of a claim, delays in opinions from the WCB's Health Care Department, delays in decisions on medial aid and delays in the implementation of a decision by the Review Office or the independent Appeal Commission.

Examples of This Issue

4. PROCESS DELAY ISSUES 2007-2011



- After his claim was denied, an injured worker appealed to the Review Office, which allowed his claim. More than five months after the Review Office decision, the injured worker called the Fair Practices Office to complain that he still had not received his benefits. A review of the file showed that the adjudicator made attempts to get information needed to calculate benefits from the employer but the adjudicator had not followed up on these requests in a timely manner. The day the Fair Practices Office made inquiries on the injured worker's behalf, a cheque for over $3,500 was mailed to him. This matter was reviewed with the manager of Short Term Claims who put a new procedure in place intended to prevent delays in implementing future Review Office decisions.

- An injured worker called with the concern that it appeared her case was not receiving sufficient attention from her case manager. She stated her various healthcare providers had made recommendations for treatment. She said that while the case manager responded with statements such as "that shouldn't be a problem", he never made decisions to either authorize or deny treatment. A review of the file showed that, indeed, recommendations for treatment had been outstanding for two months. One doctor indicated that the lack of treatment was impeding the injured worker's recovery. After the Fair Practices Office involvement, the sector manager met with the case manager to outline the outstanding items needing adjudication and set a one week deadline for completion.

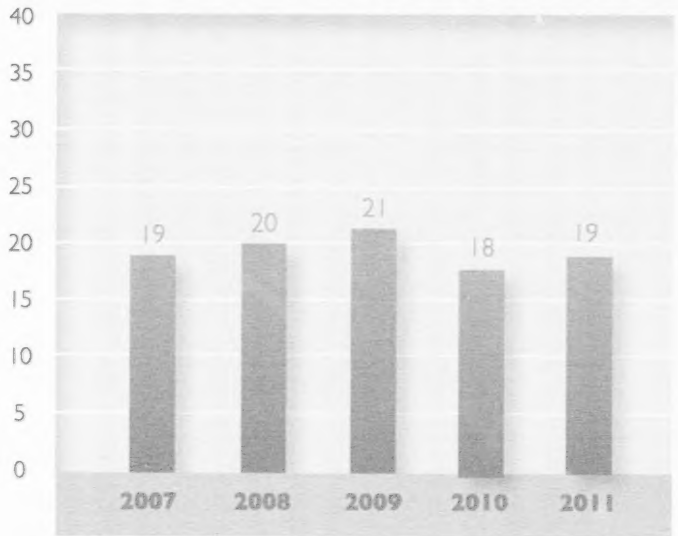
5. Unadjudicated Claims

This category of issues involves claims on which no initial decision has been made to accept or deny the claim. Delays can result from both internal factors and external factors, such as missing medical information or information from employers. It is not uncommon for individuals to be without income in such circumstances. Coupled with the anxiety caused by the injury, these delays can be particularly difficult for the injured worker.

Unadjudicated claims are closely related to process delays, but are recorded separately by both the WCB and the Fair Practices Office because of the urgency of the issue for injured workers and their employers.

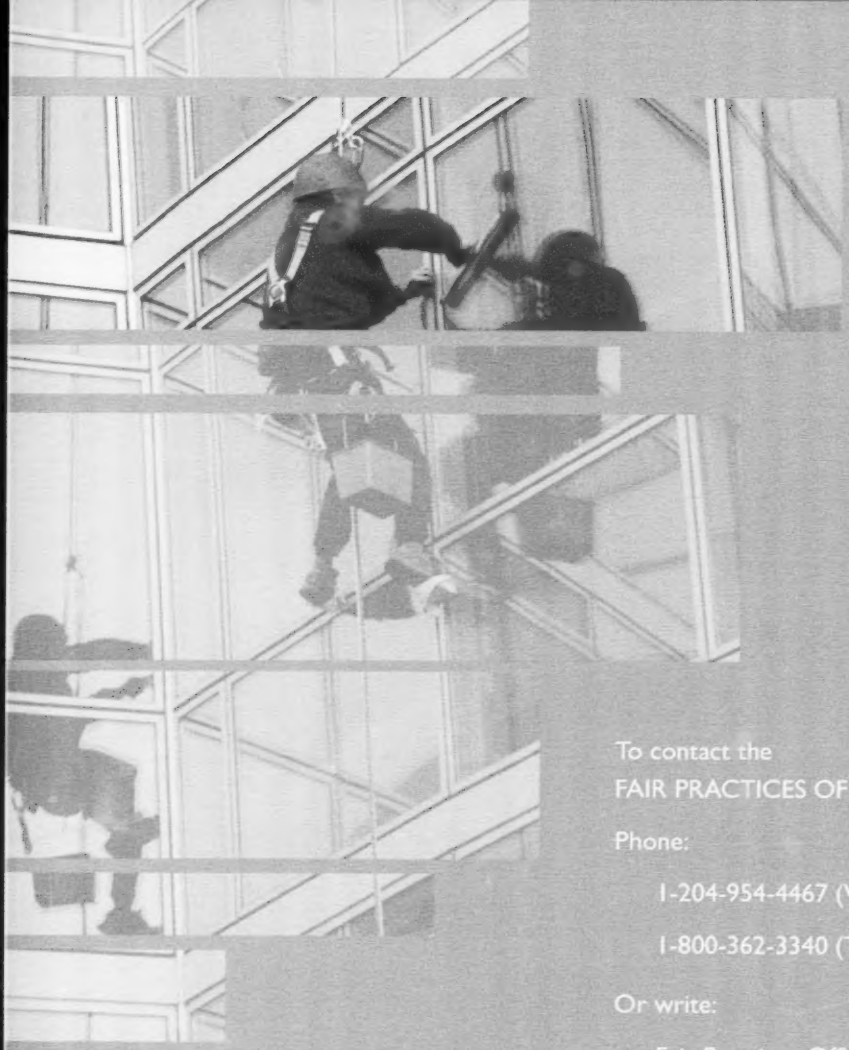
Examples of This Issue

5. UNADJUDICATED CLAIMS ISSUES 2007-2011



- Three months after the injured worker filed a claim, she called the Fair Practices Office because no decision had been made. A review of the file revealed reasons for the delay including inaccurate information supplied by the employer and the fact that the adjudicator could not contact the injured worker. The Fair Practices Office referred the matter to a supervisor in Short Term Claims. The supervisor called the injured worker and advised the claim was accepted and wage loss and medical aid benefits would be paid. The injured worker reported to the Fair Practices Office that the supervisor had been "wonderful to deal with".

- After waiting almost three months for a decision on whether wage loss benefits would be allowed for a recurrence of a work-related back injury, the injured worker called the Fair Practices Office. A review of the file revealed the reasons for the delay. The case manager had requested an opinion from a WCB medical consultant. The WCB medical consultant asked that a radiological consultant read the injured worker's MRI and CT scan and provide an opinion. Once the radiological consultant's report was reviewed by the WCB medical consultant and he provided his opinion, almost three months had elapsed. The case manager made the decision to accept that the injured worker had suffered a recurrence the day following the receipt of the opinion. In a situation such as this, the Fair Practices Office closely monitors each step to assure the injured worker there are no unnecessary delays.



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